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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 683,955	03 06 2002	Adeyinka Adedeji	08CN5915 2	7588

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EXAMINER

SHORT, PATRICIA A

ART UNIT	PAPER NUMBER
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1712

DATE MAILED 04 01 2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/683955

Applicant(s)

Adedeji

Examiner

Shurt

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on _____

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-23 is/are pending in the application.

Of the above claim(s) is/are withdrawn from consideration.

Claim(s) is/are allowed.

☒ Claim(s) 1-23 is/are rejected.

Claim(s) is/are objected to.

Claim(s) are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____

received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2, 3

Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other _____

Office Action Summary

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In view of the length of the IDS, applicant is reminded of the following suggestion for avoiding duty of disclosure problems

It is desirable to avoid the submission of long lists of documents if it can be avoided. Eliminate clearly irrelevant and marginally pertinent cumulative information. If a long list is submitted, highlight those documents which have been specifically brought to applicant's attention and/or are known to be of most significance. See *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.*, 359 F. Supp. 948, 175 USPQ 260 (S.D. Fla. 1972), *aff'd*, 479 F.2d 1338, 178 USPQ 577 (5th Cir. 1973), *cert. denied*, 414 U.S. 874 (1974). But cf. *Molins PLC v. Textron Inc.*, 48 F.3d 1172, 33 USPQ2d 1823 (Fed. Cir. 1995). MPEP 2004(13).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over each of Fujii and Chambers in view of Mhetar. Each of Fujii and Chambers teaches blends of polyphenylene ether, polyamide and a compatibilizer. The compatibilizer can be citric acid and the blends optionally include an impact modifier that can be styrene-butadiene-styrene block copolymer. See Fujii at col. 1, lines 32-56, col. 7, lines 12-13 and Examples, and Chambers at col. 3, line 18 through col. 4, lines and Examples. The compositions may contain processing aids. See Fujii Table VII and Chambers at col. 5, line 31. Mhetar teaches dendritic polyesters that can be used as processing aids in thermoplastic polymers that include polyphenylene ether/polyamide blends. See col. 2, lines 39-40, col. 3, lines 4-6 and lines 41-59, and Figure 1. In view of Mhetar, it would have been obvious to use a dendritic polyester as the processing aid in the compatibilized polyphenylene ether/polyamide blends of each of Fujii and Chambers in order to enhance melt flow thus improving processability.

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-39 of U.S. Patent No. 6,414,084 in view of Fujii. The claims of U.S. Patent 6,414,084 are drawn to compositions comprising polyphenylene ether and a dendritic polyester. Fujii teaches the use of polyamide and a compatibilizer to improve the oil resistance of polyphenylene ether while maintaining good mechanical properties and surface appearance. In view of Fujii, it would have been obvious to add a polyamide and compatibilizer to the composition of claims 1-23, in order to improve oil resistance while maintaining good mechanical properties and surface appearance.

P. Short

March 24, 2003

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